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 NETAPP, INC.,  
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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

NETWORK APPLIANCE, INC.

Case No. C-07-06053 EDL

Plaintiff-Counterclaim Defendant,

**DECLARATION OF JEFFREY G.  
HOMRIG IN SUPPORT OF  
NETAPP'S OPPOSITION TO SUN'S  
EX PARTE APPLICATION TO  
SHORTEN TIME**

v.

SUN MICROSYSTEMS, INC.

Defendant-Counterclaim Plaintiff.

1 I, Jeffrey G. Homrig, declare:

2 1. I am a member of the Bar of this Court and an associate at the law firm of  
3 Weil, Gotshal & Manges LLP, counsel of record for Plaintiff NetApp, Inc., in this case. I submit  
4 this declaration pursuant to Civil Local Rule 6-3(c). If called upon as a witness, I could  
5 competently testify to the truth of each statement herein.

6 2. Sun's proposed schedule would cut NetApp's time to file a response nearly  
7 in half – from 14 days to 9 days – while maintaining the standard 7 days for Sun to reply to  
8 NetApp's opposition. *See Motion to Shorten Time*, at 3.

9 3. The '292 and '211 patents identify the same four individuals as inventors,  
10 and NetApp asserts both the '292 and '211 patents against Sun's ZFS filesystem and products  
11 containing ZFS. As a result, discovery related to the '211 patent overlaps with discovery related  
12 to the '211 patent.

13 4. As noted above, Sun's proposed schedule would cut NetApp's time to file  
14 a response substantially, and would also reduce the Court's opportunity to review the papers from  
15 14 days to 6 days. But Sun would retain the full 7-day period in which to reply to NetApp's  
16 opposition. Sun sought unsuccessfully a similar schedule in its *Ex Parte* Application to Shorten  
17 Time for Hearing On Motion for Partial Stay. *See Docket Entry 35*, at 3.

18 I declare under penalty of perjury under the laws of the United States of America  
19 that the foregoing is true and correct.

20 Dated: September 11, 2008

21 /s/ Jeffrey G. Homrig  
Jeffrey G. Homrig